IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.668 OF 2004

M/s.Burroughs Wellcome (I) Ltd.,
L. B. S. Marg, Mulund,
Mumbai-400 080. ..Petitioner.

V/s.

1. Jagannath Namdeo Patel,
   Harihant Apts., Flat No.403,
   4th Floor,Ramnagar, Virar(East).

2. Manish Govind Mohite,
   601, Millinium Co-op. Hsg.Soc.,
   Shivaji Colony, Chakala,
   Andheri(East), Mumbai-400 093.

3. D.C.Chavarkar,
   Ambica Palace, D-4 Tondan Path,
   Ramnagar, Dombivli (East).

4. Smt.S.V. Ayarekar, Member,
   Industrial Court, New
   Administrative Building,
   Bandra(East),Mumbai-400 051. ..Respondents.

Mr.P.K.Rele, senior advocate with Vinod Tayade & R.P. Rele i/b. Piyush Shah for petitioner.

Mr.Shailesh S.Pathak, advocate with T.R.Yadav for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 12TH JULY, 2005.

ORAL JUDGMENT

1. The short point raised in this petition is, whether the employees who have availed the benefits under the Voluntary Retirement Scheme (VRS) by expressly declaring that they shall have no claim or any benefit that may arise out of any dispute pending now or that may be raised in future at any forum, can insist on continuing with the pending complaint filed by them under the MRTU & PULP Act, 1971 ? In the present case, the application made by the company for dismissal of pending complaint filed by the respondent Nos.1 to 3 who have availed the benefits under the VRS has been dismissed by the Industrial Court on the ground that the matter is controversial and needs to be decided on merit. Challenging the aforesaid decision of the Industrial Court, the present petition is filed.

2. The respondent Nos.1 to 3 were the workmen employed by the petitioner company at their factory at Mulund (W), Mumbai. On 17th June, 2003, the petitioner company had floated a voluntarily retirement scheme, 2003 for its workers. Clause 7 (e) of the said scheme reads as under :-

> "7(e) The payment made under the Scheme to workman (or his nominee in case of death) shall be in full and final settlement of and in complete satisfaction of all claims of the said workman and no further amounts will be claimed by such workman (or his nominee) against the Company, once payment has been received under the Scheme."

3. The respondent Nos.1 to 3 by their letters dated 20/6/2003, 23/6/2003 and 23/6/2003 respectively, opted for voluntary retirement. Relevant portion of the respective letter reads as under:-

> " I confirm that I cease to have any claim against the Company with effect from the date of voluntary retirement. I shall have no claim on any benefit that may arise out of any dispute pending now or that may be raised in future at any forum. I accept that I shall have no claim or right for re-employment in the Company or any other Company or concern under this management."

4. By three letters all dated 11/7/2003, the petitioner company accepted the statement of the respondent Nos.1 to 3 that they have no claim against the company and that they shall have no claim on any benefit that may arise out of any dispute pending now or that may raise in future at any forum and granted voluntary retirement with effect from 1/9/2003. Accordingly, the respondent Nos.1 to 3 were paid Rs.7,04,971.41, Rs.3,08,382.10 and Rs.4,19,652.45 respectively (after deducting the amounts permissible in law). The respondent Nos.1 to 3 accepted the cheque amount and issued a stamped

receipt with the following endorsement :-

> " I HAVE RECEIVED THE ABOVE AMOUNTS IN FULL AND FINAL SETTLEMENT OF ALL MY DUES / CLAIMS ON MY EARLY RETIREMENT. HAVE NO CLAIM (PENDING OR FUTURE) OF ANY NATURE WHATSOEVER AGAINST THE COMPANY)."

5. In view of the respondent Nos.1 to 3 availing the VRS in full and final settlement of all their claims, whether pending or otherwise, petitioner company made an application before the Industrial Court seeking dismissal of the complaint (ULP) No.1015 of 1997 filed by the respondent Nos.1 to 3 against the petitioner company. The above complaint was filed by the respondent Nos.1 to 3 against the petitioner company under sections 28 & 29 read with item 9 of Schedule IV of MRTU & PULP Act, 1971. The respondent Nos.1 to 3 opposed the application of the company on the ground that in the year 1987-88 the company had illegally suspended the respondent Nos.1 to 3 pending domestic enquiry. The Union representing the respondent Nos.1 to 3 had filed a complaint under the MRTU & PULP Act and ultimately, the company reinstated the respondent Nos.1 to 3 in the year 1994 pursuant to the order by this Court in a proceeding arising out of the said complaint. However, the differential wages during the period of suspension were not paid to the respondent Nos.1 to 3. Therefore, the complaint (ULP) 1015 of 1997 was filed.

According to the respondent Nos.1 to 3, they are entitled to the differential wages as per the certified standing orders applicable to the petitioner company and, therefore, irrespective of the availment of the benefits under the VRS, the respondent Nos.1 to 3 are entitled to claim the differential wages. Accepting the contention of the respondent Nos.1 to 3, the learned Judge of the Industrial Court by his order dated 5th January, 2004 dismissed the application of the company by holding that the issue is controversial and has to be decided on merit. Challenging the said decision of the Industrial Court, the company has filed the present petition.

6. Mr.P.K.Rele, learned senior advocate appearing on behalf of the petitioner company submitted that once the respondent Nos.1 to 3 have availed the benefit under the VRS by expressly giving up any pending claim or any claim that may arise in future, it is not open to the respondent Nos.1 to 3 to pursue any pending proceeding against the petitioner company. Mr.Rele submitted that the learned Judge of the Industrial Court was in error in holding that, whether the respondent Nos.1 to 3 are entitled to any claim / relief when they have accepted the VRS is a controversial issue and that issue has to be decided on merit. According to Mr.Rele, there was nothing to be decided on merit because, the respondent Nos.1 to 3

have expressly and unequivocally had given up all the claims pending against the company. He submitted that having accepted the VRS benefits by expressly giving up the pending claim, the respondent Nos.1 to 3 became bound and liable by the terms of the VRS and it is not open to them to deviate from the scheme and continue to agitate any claim against the company. Relying upon the decisions of the Apex Court in the case of **Vice Chairman & Managing Director, A.P.S.I.D.C.Ltd. & Anr. V/s. R.Varaprasad & Ors.** reported in **2003 I C.L.R.966** and **A.K.Bindal & Anr. V/s. Union of India & Ors.** reported in **2003 II C.L.R.535**, the learned counsel submitted that once the employees have opted for VRS voluntarily without any compulsion, it is not open to the employees to make any claim contrary to the terms accepted. It is not open to them to contend that they exercised the option under any force or compulsion or that the terms of the voluntary retirement scheme are not binding on them. Accordingly, the learned counsel for the petitioner submitted that the order passed by the Industrial Court be set aside and the complaint (ULP) No.1015 of 1997 be dismissed.

7. Mr.Pathak, learned advocate appearing on behalf of the respondent Nos.1 to 3 on the other hand, submitted that as the petitioner company had wrongly suspended the respondents in the year 1987-88 and had not taken any

further action in the matter, under the certified standing orders applicable to the petitioner company, the respondent Nos.1 to 3 were entitled to full wages for the entire period during which the respondent Nos.1 to 3 were wrongfully put under suspension. He submitted that even after this Court in Writ Petition No.2663 of 1994 directed the company to reinstate the respondent Nos.1 to 3, the company reinstated them belatedly but refused to grant the differential wages for the period of suspension. Therefore, complaint (ULP) No.1015 of 1997 was filed by respondent Nos.1 to 3. Referring to the clause 25 (V) & (V-A) of the certified standing orders for workmen applicable to the petitioner company, the learned counsel for the respondent Nos.1 to 3 submitted that where a workman is suspended pending inquiry and no action is taken under clause 25 (I) of the standing order, then the workman is deemed to have been on duty and is entitled to full wages and all privileges for the period of suspension. He submitted that in the present case, even after the suspension of the respondent Nos.1 to 3 no action was taken for years together and, therefore, as per clause 25 (V) & (V-A) of the certified standing orders for workmen, the respondent Nos.1 to 3 were entitled to the differential wages for the entire period they were under suspension. According to the learned counsel for the respondent Nos.1 to 3, the aforesaid legitimate amount due

under the certified standing order was not covered under the VRS and, therefore, the Industrial Court was justified in holding that the issue is controversial and has to be decided on merit after leading evidence.

8. The learned counsel for the respondent Nos.1 to 3 further submitted that the voluntary retirement scheme framed by the company was ambiguous and it could not be stated as to whether the claims admissible under the certified standing orders are also covered under scheme. In fact, in the case of Mr.G.S.Naik, the petitioner company had arrived at a memorandum of settlement on 22/7/2003 under section 2(p) and section 18(1) of the Industrial Disputes Act, 1947 and Rule 62 of the Industrial Disputes (Bombay) Rules, 1957 wherein it was specifically recorded that Mr.G.S.Naik will not raise any demand or dispute against the company now, or at any time in future, as regards, reinstatement, his suspension pending enquiry during February, 1987 to October, 1997 or January, 2000 to July, 2003, back wages or any other issue. In the present case, the learned counsel for the respondent Nos.1 to 3 submitted that no such particulars are to be seen in the voluntary retirement scheme, therefore, when the scheme itself does not specifically state that claim due under the certified standing orders will not be available to the employees on opting for VRS,

the complaint filed by the respondent Nos.1 to 3 could not be dismissed without deciding it on merits. In support of the above submissions, the learned counsel for the respondent Nos.1 to 3 relied upon the decision of the Apex Court in the case of **Bennett Coleman & Co.(P) Ltd. V/s. Punya Priya Das Gupta** reported in **1969 (2) Supreme Court Cases 1** and the decision of this Court in the case of **Hindustan Lever Mazdoor Sabha V/s. Hindustan Lever Ltd.** reported in **2005(2) Mh.L.J.575**. Accordingly, the learned counsel for the respondent Nos.1 to 3 prayed that the petition be dismissed.

9. Having heard the counsel on both sides, I am of the opinion that once the respondent Nos.1 to 3 opted for voluntary retirement scheme floated by the petitioner company and availed the benefits under the VRS by expressly stating that they shall not have any claim or any benefit that may arise under any pending dispute or that may arise in future at any forum, it is not open to them to persue any claim pending against the company. It is not in dispute that the respondent Nos.1 to 3 have voluntarily opted for VRS and the same was granted on the basis of the statement contained in their application that they shall not have any claim against the company whether pending or otherwise. Even in the receipt signed while accepting the amount under VRS the respondent Nos.1 to 3

have specifically stated that they shall not claim any benefit from any claim pending against the company. In this view of the matter, it is not possible to accept the contention of the respondent Nos.1 to 3 that even after availing the VRS, they are entitled to continue with the complaint (ULP) No.1015 of 1997 filed by them against the company.

10. The Apex Court in the case of Vice Chairman & Managing Director, A.P.S.I.D.C.Ltd. & Anr. (supra) held (at para 12) as follows:-

> " ...When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is matter of contract between the Corporation and the employees. It is not for the courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circular governing them under which Voluntary Retirement Schemes floated."

11. Similarly, in the case of A.K.Bindal & Anr.(supra), the Apex Court at para 34 has held as follows :-

> " The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited the pursued their claim for revision of pay scale without opting for VRS. However they, in their wisdom thought that in

> the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety nine per cent of employees have availed of the VRS Scheme and have left the companies (FCI & HFC), the writ petition no longer survives and has become infructuous.

. In the present case, it is not in dispute that the respondent Nos.1 to 3 have voluntarily opted for the VRS. It is also not in dispute that the benefits under VRS were granted to the respondent Nos.1 to 3 in view of their statement that they shall have no claim (whether pending or future) against the company. Therefore, the respondent Nos.1 to 3 were bound by their statement and their pending claim in complaint (ULP) No.1015 of 1997 was liable to be dismissed as infructuous. Even if the respondent Nos.1 to 3 were legitimately entitled to any benefit under the certified standing orders, in view of the respondent Nos.1 to 3 expressly giving up that claim and opting for VRS, it was not open to them to continue with any claim pending against the company.

12. The decision of this Court in the case of Hindustan Lever Mazdoor Sabha Mumbai (supra) relied upon by the learned counsel for the respondent Nos.1 to 3 is distinguishable on facts. In that case, admittedly the workmen had not signed the settlement by giving up their

claim. In the present case, the respondent Nos.1 to 3 have specifically given up the claim (whether pending now or any claim that may arise in future) against the company. Therefore, the ratio laid down in the aforesaid case is not applicable to the facts of the present case. Similarly, the decision of the Apex Court in the case of Bennett Coleman & Co. (supra) is also distinguishable on facts. In that case, the employee on resigning from the company had claimed compensation for leave period. While receiving the dues on resignation, the employee had signed a receipt to the effect that he is receiving the amount in full and final settlement of his claim. In that context the Apex Court held that the employee did not make any representation when he signed the said receipt that he had waived his claim for leave period. In the present case, as stated earlier, the benefits under VRS was available only if the employee accepts the amount in full and final settlement of the claim and gives up any claim pending against the company or any claim that may arise in future against the company. In fact, the respondent Nos.1 to 3 have specifically given up all cliams pending against the company as also the claim that may arise against the company in future. The fact that the respondent Nos.1 to 3 would give up their claim in complaint (ULP) No.1015 of 1997 was not specifically mentioned would not make any difference. Therefore, the ratio laid down by the Apex

Court in the case of Bennett Coleman (supra) is not applicable to the facts of the present case.

13. It was contended that as in the case of Mr. G.S.Naik, it should have been specifically set out in the voluntary retirement scheme that the respondent Nos.1 to 3 will not raise any demand or dispute against the company now or at any time in future regarding reinstatement and back wages, etc. during the period they were under suspension. There is no merit in this contention. Admittedly, Mr.G.S.Naik had not opted for VRS and his was a case of settlement under section 2(p) and section 18(1) of the Industrial Disputes Act, 1947 and Rules 62 of the Industrial Disputes (Bombay) Rules, 1957. Moreover, the said G.S.Naik was on verge of retirement and, therefore, the settlement was arrived at between the parties on terms set out therein. In the present case, the respondent Nos.1 to 3 have understood the VRS scheme properly and accordingly made the statement that they will not claim any benefit from the pending proceedings and, therefore, it is not open to them to argue to the contrary. In my view, the Industrial Court was clearly in error in dismissing the application of the company on the ground that the issue is controversial and the same is to be decided on merits.

14. Accordingly, the petition succeeds. The impugned order passed by the Industrial Court on 5th January, 2004 (Exhibit-J) is quashed and set aside and the complaint (ULP) No.1015 of 1997 filed by the respondent Nos.1 to 3 before the Industrial Court shall stand dismissed. Rule is made absolute in terms of prayer clause (a) & (b) with no order as to costs.

15. At this stage, the learned counsel for the respondent Nos.1 to 3 applies for stay of this order for 8 weeks. Application is rejected.

Sd/-

(J.P. DEVADHAR, J.)